

LSH
Heard at Field House
On 9 May 2002

APPEAL NO GV/30626-1996
HX/51085-2000
HX/59124-2000

**LR & Others (Persecution - Vendetta) Colombia CG [2002] UKIAT 03158
IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

26 July 2002

Before:

**Mr G Warr (Chairman)
Mr A Smith
Mr C Thursby**

Between

**LILIA HURTADO DE RINCON
NELSON ARTURO RINCON-HURTADO
DANIEL NIETO HURTADO**

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellants, who are citizens of Colombia, appeal the determination of an Adjudicator (Miss M N Lingard) dismissing their appeals against the decision of the Secretary of State to refuse their applications for asylum. The Tribunal initially refused leave, but that decision was quashed by Order of the High Court. Leave was granted on 20 March 2002.
2. Mr D H Southey, of Counsel, instructed by Glazer Delmar represented the appellants while Mr Davidson appeared for the Secretary of State.
3. The first named appellant is the mother of the other two appellants, Nelson and Daniel. Their appeals have at all material times been dealt with together by agreement. The first named appellant has some immigration history. She first arrived here in May 1996. She

was refused entry as a visitor and removed to Colombia. On 10 June 1996 she returned to the United Kingdom and applied for asylum. Her application was refused and she was sent to Spain on safe third country grounds on 9 August 1996. She was returned to the United Kingdom on 10 August 1996 and claimed asylum on re-entry. That application was refused. An Adjudicator dismissed the appeal. However, the Immigration Appeal Tribunal allowed an appeal from that decision on 14 August 1997 to the extent of remitting it to a different Adjudicator to be heard afresh. The background to those proceedings was that the original Adjudicator had been requested to adjourn the proceedings because it was said that the appellant was unfit to give instructions. When the matter came before the Tribunal on 7 May 1997 the Tribunal adjourned the matter to 11 June 1997 in order that the appellant could produce further and unequivocal evidence indicating whether or not the appellant was in a fit state to give evidence. On 11 June the Tribunal had a medical report from a psychiatrist. While it did not consider it necessarily unreasonable of the Adjudicator not to adjourn the proceedings, the Tribunal felt that it was now clear the appellant was now in a position to give evidence. Accordingly, the matter was remitted for a fresh hearing. When the matter came before the Adjudicator on 9 February 2001 she was handed a psychologist report dated 7 February 2001 stating that Lilia was still unable to give an accurate account of her experiences in Colombia. Accordingly, only her children gave evidence before the Adjudicator. Lilia was, however, present for much of the lengthy hearing before her. Nelson and Daniel arrived in the United Kingdom on 24 March 1997 and 27 November 1996 respectively.

4. The case of all three appellants concerns a family feud between the Hurtados and two other families, the Correa and Acosta families. The Hurtado family are historically based in Santuario and the feud between the families is, apparently, long established.

5. The Adjudicator reviewed the facts and made her credibility assessment in the following closing extract from her determination:

"101. My first findings of fact relate to my credibility assessments of each appellant. Only Nelson and Daniel gave oral evidence before me.

102. In my deliberations about each appellant's credibility I have taken into account each appellant's own evidence and also objective evidence before me.

103. Lilia was not called to give oral evidence before me on the basis of an up-to-date psychologist's report the summary of which identified that as at 7 February 2001, two days before the hearing date, a qualified psychologist considered Lilia was and is still not able to give an

accurate account of her experiences in Colombia. I have borne in mind in my deliberations that the appeal Tribunal, having received psychiatrist's report identifying the appellant to be fit to give oral evidence, Lilia having failed to give oral evidence at the initial appeal hearing, determined that the appeal be heard afresh in order to give Lilia a chance to be orally examined. I realise that the psychiatric report had indicated a possibility of the appellant subsequently relapsing into a state where she was unable to give oral evidence but I am bound to note that the most up-to-date report on this appellant's mental health is not one emanating from a qualified psychiatrist.

104. Lilia had adduced for this appeal an unsigned statement dated 2 August 2000 in which she expresses (paragraph 1) her fears of being unable to answer questions about the contents of her statement during her appeal hearing because of her memory problems.
105. The respondent has attacked the credibility of this appellant due to discrepancies in her accounts. For example, in her first statement (annexure B1-B5 of the appropriate respondent's bundle) the appellant clearly stated that she and her family were not members of any political party but that they did vote for the Liberal party. Subsequently Lilia has indicated her membership of and activities for the Liberal party is the reason she has been persecuted. There were discrepancies as to the date of her husband's death and the period of time during which in one account the appellant was separated from her husband. While the appellant has sought to clarify these matters in her latest statement there has of course been no chance for her to be cross-examined and I am bound to question the appellant's credibility or, in the alternative, on account of medical evidence which questions her ability, among other things, to recall events, to disregard what she has had to say in her accounts.
106. On account of all these factors, therefore I do not find credible Lilia's particular claims about being targeted for adverse interest by Correas or Acosta family members of their hired hands.
107. Each of the appellant has adduced a large body of background evidence related to their claims such as, in the case of Lilia, her Liberal party membership card issued in 1966, and in respect of the whole family, death certificates and police reports. In many instances the originals of such documents were adduced and I see no reason to question the genuine nature of any of these

documents. The respondent has certainly not done so or if he has, has not taken ample opportunity given to him to verify or authenticate any of the documents. Lilia has identified that many of the references to date and occurrences in her statement have been obtained by references to these documents.

108. By the first named appellant's own admission in one of her accounts she first became a card carrying member of the Liberal party in 1966, three years after Nelson was born, but claims that she stopped working for the Liberal party in 1991. However, Lilia's first claimed problem appears to have arisen in 1988 when her husband was attacked on the way to the family home in Santuario. This event, which several years later resulted in the death of Lilia's husband, seems to me to be related to individuals looking for a third party whom they located as staying with Lilia's family. It would seem unlikely to me, therefore, that Lilia's Liberal party membership or activities played any part in this, or indeed subsequent problems that she claims to have had within Colombia.
109. By Lilia's own admission she has never been physically attacked or harmed, she has never been able to identify anyone approaching or threatening her in relation to her problems and, apart from receiving threats over the years, in various locations where she had lived throughout Colombia there was only one incident where the appellant suffered the likelihood of physical harm, namely on 20 March 1996 when people went to the house where she was staying in Bogota at 2:00 a.m. in the morning, were banging the house with stones and threatening to kill her. The appellant was, however, able to escape her attackers on that occasion and, shortly thereafter she made her first journey out of Colombia to the UK.
110. Bearing in mind that, quite clearly, from evidence supplied by Lilia and her family, numerous members of the Hurtado clan have been violently killed or have disappeared it seems to me that, particularly from the first appellant's claims that those who meant her harm often knew where she lived, that if members of the Acosta or Correa families were behind the problems that arose and meant her harm they would have easily been able to have taken action to have added Lilia to the list of those other deceased members of the Hurtado family.

111. I have difficulty in identifying any reason that might lay behind any adverse interest in Hurtado family members from the Acosta or Correa families.
112. In any event I find it unlikely that politics has been the motivation that lay behind any problems the Hurtados have had in Colombia. Apart from anything else, during the time when it is likely, by Lilia's own claims, that she was not politically active, she does not appear to have had any problem herself from any quarter.
113. There have been different accounts between the appellants as to what lies behind the problems that have arisen between the Hurtado, Correa and Acosta families.
114. There have, at times, been indications that it is the Hurtado name itself that marks someone out for adverse attention, although I cannot see how this can be the case as clearly, by Lilia's own admission, her mother has remained in Santuario and never had any problem. Also, the appellant's daughter, Dora, never had any real problems. There are discrepancies in the accounts as to whether or not Dora had any problems at all. I do not find it credible that Dora did have problems as while, in one account, it is stated that she received threats on the other hand Nelson has identified that no one knew of Dora's association with the Hurtado family since she had been married and lived in Bogota since around 1976. I do not find credible that the Correa and Acosta families would have been ignorant of Dora's family background, particularly as the March 1996 and March 1997 incidents occurred at the home of Dora. I do not believe Nelson when he tries to indicate that Dora identified herself to others as someone renting the house so that they were unaware of her Hurtado connections.
115. I am only able to make a very low credibility assessment in respect of Nelson.
116. In my considered opinion Nelson has not given straightforward and clear evidence regarding his claimed connections with the Liberal party. He gave a number of factually incorrect answers at interview with regard to the Liberal party. He has tried subsequently to indicate that he was tired confused and anxious at that interview. I can understand this. However, when Nelson was orally examined before me he displayed the same lack of political awareness that I would not have expected from someone who had once, he claims, been a Liberal party member, incidentally, evidence of which has never been

submitted. While I can accept the difficulties posed to any asylum seeker in the production of evidence in this particular case it would have been reasonable to suggest that if Nelson had ever been a member of the Liberal party or had been a Liberal party activist that he would have been able to produce some evidence regarding this, particularly in the light of the very large body of evidence that has otherwise been adduced.

117. Again, Nelson was never physically hurt in an attack and, by his own admission, was unable to identify his attackers. I discount and give no weight to Nelson's claims of having been arrested in 1983 as, even were I to find this credible, whatever led the police to arrest him on that occasion they clearly had no long term interest or suspicions about him as he was released within the space of twenty-four hours and never had any subsequent problems from the authorities.
118. I do not accept Nelson's claims that he was in any way frightened of the police or police authorities. Clearly, by his own admission, Nelson has approached the police and other Colombian authorities on occasions to make statements about threats/attacks and to ask the police to investigate matters on his behalf.
119. It is also worth noting, with regard to political matters, that, even if one were to accept that Nelson had been associated with the Liberal party he has identified that any work he may have carried out for the party ceased in 1987.
120. Daniel was an entirely credible witness. I have, however, to bear in mind that, by his own admission Daniel's evidence relies entirely upon accounts he has been given of the situation by Lilia and Nelson. Daniel mainly lived with his sister, Dora in Bogota and has never, himself, been threatened or attacked.
121. There have been references in evidence put forward on behalf of the appellants that the Liberal and Conservative parties within Colombia are split along religious lines, the Conservatives representing Catholicism while the Liberals do not. Each of the appellants are, however, identified as being of the Catholic religion.
122. There has been evidence put forward on behalf of the appellants that the Hurtado family have represented Liberal party interests whereas the Acostas and Correa families represented Conservative party interest.

However, I must note from background evidence that a faction within the Conservative party of (the Movimiento De Salvacion Nacional (MSN) was led by one Alvaro Gomez Hurtado until he was murdered in the October of 1995.

123. I have also borne in mind in my deliberations the starred Tribunal determination in **Gomez**. Although I appreciate that the facts involved in that case and the appeals before me are entirely different this starred determination thoroughly pursues many of the same questions raised by the appeals before me.

124. Were I to have found any of the appellants to have made out a 1951 Convention ground of political opinion I note that, in the Gomez determination of the Tribunal, where an appellant can make out a Convention ground of political opinion he or she must also establish that the persecution is on account of that political opinion. As is stated by the Tribunal:

"A family wishing to revenge the killing of their son may not impute a political opinion to the murder, notwithstanding that the murderer is one of their political opponents. Of course the family's motives in a particular case maybe both private revenge and political animus, but that will not always be so.

It is also common sense that although one may hold a political opinion, not everything one does is motivated by that political opinion."

125. The vast majority of death certificates identify Hurtado family members being the subject of violent deaths within Santuario or in neighbouring areas. Claims by the first and second appellants, therefore, that they were pursued by opposing family members within far flung areas of Colombia are not for reasons already stated found by me to be credible and also seem an unlikely eventuality even on the lower standard of proof applicable.

126. I have looked at and carefully considered evidence supplied on behalf of the appellants which try to shed some light upon the problems that have arisen and the likely causes of the family feuds that began many years ago in Santuario.

127. These reports relate to an extract from the book "El Hueco" (The Hole) by German Castro Caycedo, a Colombian journalist, and expert reports by Professor

Jenny Pearce, dated respectively 28 February 1997 and 14 December 1997 and also the expert report of Dr Elizabeth Allen dated 14 September 2000 (these are contained at, respectively, pages 227-292, 295-229 and 302A-302G of the appellants' bundle.

128. The first mentioned report indicates:
- "In the cemetery of Santuario the graves do speak and talk all these stories, in spite of being divided into two distant and irreconcilable pavilions, one by tombstones with the surname Correa and the other by tombstones with the surname Hurtado. In total there are 90-2 plaques, corresponding to the same number of dead people of the two families which decided to eliminate each other since May 1983, in a war which began because of a bunch of bananas and which has also involved other families such as the Acosta have been victimised, of which there are only two women left because even the paralytic man was ridden with shots."
129. Mr Southey pointed out it is difficult if not impossible for a voyeur or expert from outside of the area of the family feud to identify exactly how or why the vendetta first started or indeed why it continues.
130. The reports of Dr Allen and Professor Pearce refer to the great deal of criminal as well as political violence within Colombia, identifies, regarding Lilia's story, the way her family got caught up in party political violence as not being at all unusual and provides specific evidence that 36 members of the Liberal party were assassinated in 1995. Professor Pearce's second report, of December 1997, refers to the fact that historically, in the nineteenth century, local leaders took the colour of one or other of the two ruling parties, namely, Liberal or Conservative. She identifies that the differences between them were most significantly over religion and also indicates that local feuds or disagreements took on a political character which has stamped itself on generations of the same family and led to revenge killings which characterise many areas of Colombia today. There is also reference in this report and other reports to these family feuds being fuelled by family associations with the drugs/criminal industry.
131. None of the writers of any of these reports/publications have come before me to be orally examined on the material which have been adduced on behalf of the appellants and although I have no doubt at all that each

of the authors of these materials is eminently expert on the subject of Colombia I must bear in mind that I am unaware of when, if ever, these experts have travelled to Santuario and none of the authors have provided source materials in relation to the particular claims made about the historical and current reasons which lay behind the deaths of so many members of the Hurtado, Correa and Acosta families.

132. I note that in **Gomez**, while recognising that Professor Pearce has a great fund ad depth of knowledge in relation to the situation in Colombia, the Tribunal, in relation to the expert report submitted in that case, identified that Professor Pearce should not attempt in her report to usurp the fact-finding function of the Appellate Authority whose duty it is to test and evaluate the evidence in accordance with the legal criteria contained in the 1951 Refugee Convention.
133. From assessing all of the evidence now before me it is my considered opinion that there have been many violent deaths within not only the Hurtado family but also within the Correa and Acosta families too and that the majority of these problems have arisen within Santuario and its immediate environs. It is difficult, if not impossible, in my view to identify the original cause of this family feud/vendetta or to specifically relate one family death or another to either crime, politics, drugs trafficking or even simple tit for tat killing.
134. In my view the appellants fail to show that they have been persecuted on account of politics or of their membership of a particular social group. Membership of a particular family is capable of falling within the category of a particular social group. It is accepted, in this case, that the agent of persecution is not the state and neither, in these particular cases at least, is it argued that the state has colluded in any way with the non-state agents or persecution. However, it seems to me, that the persecution does not arise because of an appellant's membership of the Hurtado family. There are Hurtado family members who have clearly not been subjected to difficulty or persecution, both inside Santuario and in other areas of Colombia. Neither can it be shown, in my view, to the reasonable likelihood standard, that Hurtado family members who may have been persecuted have been persecuted for any 1951 "Convention reason".
135. I think one must not lose sight here of the vendetta aspects which involve not only Hurtado family members

being killed by Acosta and Correa family members but also, presumably Correa and Acosta family members being killed, for one reason or another, by Hurtado family members. It does not seem to me that the 1951 Convention should be brought into play and offer international protection where such circumstances exist, even set against the background, identified in the **Gomez** decision, that the Colombia authorities cannot provide an adequacy of protection.

136. As I have already identified it is, I determine, very difficult if not impossible to locate the original or current reason why the family vendetta commenced/continues and from the evidence before me it seems, in my opinion to be continuing for a variety of differing complex and perhaps interconnected reasons and is not directed at all members of the Hurtado family, or even necessarily on account of the fact that one is a Hurtado family member.

137. In conclusion I find that none of the appellants have shown, even to the lower standard, that they have well-founded fears of persecution in Colombia on account of a 1951 "Convention reason" or that any of them would be so persecuted should they now return to Colombia."

6. The decisions under appeal in these cases pre-date the coming into force of the Human Rights Act. Consequently, the Adjudicator was not concerned with any issues other than asylum issues.
7. Mr Southey submitted that some of the Adjudicator's findings might be sufficient but others were suspect and a remittal might be appropriate. There was a history of political violence and no other apparent explanation for the feud. It was either a political feud or it was one which had developed into a feud where no one could remember what the origins were. Mr Southey referred us to **Skenderaj** [2002] EWCA CIV 567, a decision of the Court of Appeal. It was not necessary to find discrimination. The Court of Appeal had stated in paragraph 29 of the decision that there was "powerful authority that kinship or family membership may, depending on the circumstances, qualify as membership of a particular social group."
8. The feud was not simply a private matter in the Hurtado family. Even by the standards of Colombia, the events complained of were particularly shocking. Mr Southey also relied on the Tribunal decision of **Jaramillo-Aponte** (00/TH/00428) promulgated on 28 April 2000. In paragraph 33 of that case the Tribunal had said that where the target was the family and individuals were persecuted as members of the family, the family were a social group for the purposes of the Convention. "On the other hand where the target

for the persecutory acts is an individual member of the family any asylum claim based on family membership will depend on whether the individual is being persecuted for a Convention reason. A critical element is therefore, the identification of the target of the persecutory acts."

9. In the case of the Hurtados, the family was the target. It was not a question of one particular individual. On the other hand, a straightforward family feud did not engage the Convention: see **Naranjo Correa** (01/TH/01177) a decision of the Tribunal promulgated on 7 June 2001.
10. The Adjudicator had felt that Lilia was not at risk because no one had attacked her so far. However there had been a large number of killings over a long period of time. Not all of the victims were young. Counsel did not dispute that the majority of the victims had been in Santuario – after all that was where the family was based. The Adjudicator appeared willing to accept that there would be some problems outside Santuario. A supplementary report had been filed by Elizabeth Allen who had dealt with the possibility of persecution in areas outside Santuario. Reference was made to paragraph 133 of the determination.
11. Mr Davidson accepted that paragraph 133 of the determination which we have re-produced above could not be sustained. However, in other respects he sought to uphold the Adjudicator's determination. He also relied on **Skenderaj**. The Hurtado family were simply an ordinary family which had got involved in a feud. It would be artificial to regard it as a particular social group. Even if the family was a group, the fear of persecution was not because of membership of the group but because of fear of reprisals – see paragraph 37 of **Skenderaj**. Mr Davidson drew our attention to paragraph 126 of the determination. The feud appeared to have begun over a bunch of bananas in May 1983. It was a tit for tat feud and the motivation seemed to be revenge and the fear was one of reprisals and not because of membership of the group. There was no nexus between the persecution feared and a Convention reason. In paragraph 51 of the determination it was confirmed that neither the first appellant nor Daniel had ever been physically hurt by anyone and apart from Nelson's overnight arrest in 1983 neither he, his mother nor Daniel had ever been arrested. In paragraph 58 of the determination the Adjudicator had recorded Nelson stating that his sister, Dora, who remained in Colombia, had no problems. The risks facing the appellants were simply speculative. It was not demonstrated that all Hurtados would be killed. The possibility for relocation was available – Dora lived in Bogota, for example. The Adjudicator had dealt with the matter in paragraph 114 of the determination.

12. Mr Southey submitted that different individuals had been killed on a basis which was unclear. It was not apparent immediately prior to their deaths that they were other than safe. The rival families were systematically weeding them out. The appellants were at risk as members of the Hurtado family. The reference to the feud originating over a dispute about bananas did not undermine the claim that the origins of the claim were political in nature.
13. We have carefully considered all the material before us. It does not appear to us that the Adjudicator, in a long and careful determination was not entitled to make the findings that she did in respect of the credibility of the story of the appellants. In particular, we do not find that she was not entitled to make the observations that she did about Lilia's credibility. The Tribunal, when it remitted the matter for rehearing, was concerned to give the appellant the possibility of an oral hearing. Mr Southey accepted responsibility for not calling the appellant. It should be borne in mind that Adjudicators have great experience of hearing evidence from those who have, or who claim to have, undergone traumatic experiences. They will be receptive to arguments that the quality of evidence that an appellant is able to give will be affected by those experiences. Medical evidence can be relied upon to explain the quality of the evidence. For the most part, we would feel it preferable for appellants to be called in these circumstances. Where an appellant is not called, the Adjudicator has to do his or her best with the material available. The appellant had the advantage of being represented by very experienced Counsel and we do not wish to query in any way the course he took. He had to weigh the advantages and disadvantages of calling or not calling the appellant. We do not feel that the Adjudicator's credibility findings were other than properly reasoned and sound and we see no reason to interfere with them.
14. Argument before us concentrated on the findings that the Adjudicator had made in the appellant's favour. It appears clear that there has been a long running feud between the families. The origins of this feud, as the Adjudicator said, are obscure. Nevertheless, it is not in our view, established that the origins were political. The extract from the report which the Adjudicator mentions in paragraph 126 suggests that a dispute of a private nature caused the violence in 1983. Even Counsel acknowledged (see paragraph 127 of the determination) that it was difficult if not impossible to identify exactly how or why the vendetta first started or indeed why it continued. The burden of proof remains on the appellants, light though it is in appeals of this kind. In **Skenderaj** the Court of Appeal considered in paragraph 30 the threat faced by the **Skenderaj** family:

"The threat was, as in **Pedro** (which concerned the rape of a woman in Angola by a soldier) a private matter, just as would be a

long standing and violent feud between neighbours or threats of violence from criminals for some actual or perceived slight or with some motive of dishonest gain. It would be absurd to regard the first limb of the refugee test as engaged every time a family is on the receiving end of threatening conduct of that sort."

15. Mr Southey submits that the family as a family is persecuted – if it be the case that it cannot be established that the feud is political. The Court of Appeal approved the remarks of the Tribunal in **Naranjo Correa** in paragraph 36 of the judgment which it may be convenient to set out here:

"In our view, a straightforward family feud does not engage the protection of the Refugee Convention, unless for example there is some evidence of a differential lack of protection, or some Convention content over and above the family background (as required in **Quijano**). Otherwise one might be faced with a bizarre situation that one man would not be protected against fear of his personal enemies; but if they took out vengeance on his brother, then the brother would be protected. No doubt if the first man sought to protect his brother, and brought down the wrath of his enemies on himself while engaged in that, then he too could expect protection."

16. The Court of Appeal concluded in the **Skenderaj** case that although the family was a particular social group "his fear of persecution was not because of that membership but because of fear of reprisal for his uncle's act of killing one of the other family."

17. There is also the question of relocation. Elizabeth Allen states as follows in paragraph 3 of her latest report:

"One could argue that there are degrees of risk in the circumstances described by the client, and that there could be greatest danger, for example in the local area of Santuario, Pereira and Risaralda. One could suggest that the risk is not so great in other larger cities, outside the surrounding region. One could argue that there is lesser risk of danger in "far flung areas of Colombia". In the context of the present situation in Colombia, the persecution of individuals is such that internal flight from violence has sent over 2 million people to flee from their homes.

In the whole country, whatever the area, there is justifiable fear and suspicion of strangers, particularly those who have no family connections. Persecution, of various kinds, has found people in shanty towns, in middle class areas, in small towns and villages, and in the main cities, through design and sometimes through accidental identification. In the circumstances that the client describes, it is credible that the client could still be in fear of persecution, even if she moved to another part of the country."

18. It was not of course necessary for the Adjudicator to consider the question of internal relocation and it is not clear that she indeed meant to do so. She was simply commenting that the majority of the problems had arisen in the locality. The report, however, does appear to acknowledge that the degree of risk can to a certain extent be reduced by moving.
19. On the authorities, and on the Adjudicator's findings of fact, it is not established that what is being described in this case is other than a straightforward family feud. The scale of the feud does not transform it from being in the nature of a serious private quarrel. It is, in another words, "a private matter, just as would be a long standing and violent feud between neighbours or threats of violence from criminals for some actual or perceived flight or with some motive of dishonest gain...." See paragraph 30 **Skenderaj**.
20. Valiantly though Counsel has striven to take this case out of the type of case considered by the Court of Appeal, we do not believe that in the end he has succeeded. On the Adjudicator's findings, she was correct to dismiss these appeals on all points save for those matters canvassed in paragraph 133 of her determination. Accordingly, we affirm the Adjudicator's determination and dismiss these appeals.

G Warr
Vice President